

LAWLER, METZGER, KEENEY & LOGAN, LLC

2001 K STREET, NW
SUITE 802
WASHINGTON, D.C. 20006

REGINA M. KEENEY
gkeene@lawlermetzger.com

PHONE (202) 777-7700
FACSIMILE (202) 777-7763

REDACTED – FOR PUBLIC INSPECTION

October 12, 2011

Via Electronic Filing

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Re: *Applications of AT&T Inc. and Deutsche Telekom AG for Consent to
Assign or Transfer Control of Licenses and Authorizations*
WT Docket No. 11-65 – *Ex Parte* Notice

Dear Ms. Dortch:

On October 7, 2011, representatives of Sprint Nextel Corporation (“Sprint”) met with staff members of the Federal Communications Commission (“FCC” or “Commission”) and the Antitrust Division of the U.S. Department of Justice (“DOJ”) to discuss the engineering and economic simulation model (the “Model”) untimely filed by AT&T and Deutsche Telekom (the “Applicants”) in the above-referenced proceeding. A list of the Commission and DOJ staff and the Sprint representatives attending the meeting is set forth in Attachment A.

During the meeting, the Sprint representatives discussed the attached chronology of AT&T’s submissions and re-submissions related to its confidential model (*see* Attachment B; copies of the chronology were distributed during the meeting). AT&T did not submit any model until more than three months after it filed its Application, and only submitted its “final” model results almost four months after its Application. AT&T still has not fully documented its model and key questions remain unanswered.

Sprint’s representatives also discussed flaws in AT&T’s model for estimating the competitive effects of the transaction, which should cause the Commission to attach no weight to the model’s conclusions. The Sprint representatives noted that the model only studied 15 CMAs, and **[Begin Highly Confidential Information]** [REDACTED]

[REDACTED] [End

Highly Confidential Information] The Sprint representatives pointed out that the Applicants' analysis employs inconsistent inputs and assumptions, overstates the alleged efficiencies and understates the anti-competitive effects of the proposed transaction.

[Begin Highly Confidential Information] [REDACTED] [End

Highly Confidential Information]

The Sprint representatives emphasized that the Applicants have failed to meet their burden of demonstrating, by a preponderance of the evidence, that the transaction would serve the public interest. Noting that the comment cycle in the proceeding closed on June 20, Sprint's representatives urged the Commission to move forward promptly with a Hearing Designation Order.

Pursuant to section 1.1206(b)(2) of the Commission's rules, 47 C.F.R. § 1.1206(b)(2), and in accordance with the requirements of the Second Protective Order in this proceeding, 26 FCC Rcd 8801, the redacted version of this *ex parte* notification is being filed electronically for inclusion in the public record of the above referenced proceeding. The highly confidential version of this *ex parte* notification is being filed with the FCC Secretary's Office by hand delivery, and two highly confidential copies are being hand delivered to Kathy Harris of the FCC.

Respectfully submitted,

/s/ Regina M. Keeney
Regina M. Keeney

Attachment

cc: FCC Staff Listed in Attachment A
Jim Bird
Stacy Ferraro
Kathy Harris
David Krech
Kate Mataves
Best Copy and Printing, Inc.

ATTACHMENT A

October 7, 2011 Meeting - List of Attendees

FCC

Renata Hesse, Office of the Chairman
Jonathan Baker
Patrick DeGraba
Jack Erb
Paul LaFontaine
Joel Rabinovitz
Gregory Rosston
Paroma Sanyal
Susan Singer

U.S. Department of Justice, Antitrust Div.

Michael D. Bonanno
John R. Doidge
William R. Majure
Nathan H. Miller

Sprint Representatives

Antoinette C. Bush
Matthew P. Hendrickson
Regina M. Keeney
A. Richard Metzger, Jr.
Steven C. Sunshine
David Reitman
Steven C. Salop
Yianis Sarafidis

ATTACHMENT B

MODEL CHRONOLOGY

April 21, 2011

Applicants file application and declaration from Compass Lexecon.

- Contains no model
- Does not quantify the claimed synergies

May 31, 2011

Sprint files petition to deny, including CRA declaration.

- Presents a unilateral effects model that calculates GUPPIs for an all wireless national market based on proportional diversion and estimated margins for AT&T and T-Mobile
- Calculates Compensating Marginal Cost Reductions (CMCRs) based on this model
- Based on this analysis, concludes that there are “potentially serious unilateral effects concerns from the merger”
- Concludes that the merger would “result in a number of harmful exclusionary effects on Sprint and the regional fringe”
- Concludes that “the merger raises a substantial risk of parallel accommodating conduct as well as the risk of facilitating informal coordination resulting from a common understanding by AT&T and Verizon of their mutual interdependence and the relative gains from cooperative versus non-cooperative conduct”
- Concludes that the “efficiency claims are overstated and flawed”

June 9, 2011

Applicants file opposition, including Compass Lexecon reply declaration.

- Presents a revised version of the CRA model in which proportional diversion is replaced by diversion based on gross adds
- Concludes that the resulting GUPPIs “are not very far from the threshold that is used at the Antitrust Division in determining whether GUPPI levels raise unilateral effects concerns”

June 20, 2011

Sprint files reply, including CRA reply declaration.

- Presents a revised unilateral effects model using newly available NRUF/LNP porting data to calculate diversion ratios
- Concludes that the “proposed merger would lead to even greater upward pricing pressure” than that calculated under the assumption of proportional diversion
- Concludes that “the fringe carriers are not significant competitors” for sales to enterprise customers and “T-Mobile was a frequent bidder for these contracts”
- Presents a coordinated effects model (CPPI) that shows that “AT&T and Verizon would have a greater incentive to participate in [Parallel Accommodating Conduct] following the merger and that the maximum sustainable coordinated price level would rise”

July 13, 2011

Compass Lexecon reveals the existence of a new model at the Workshop on the Economics of the Proposed AT&T-T-Mobile Merger.

- “...I am going to report on some additional work, and I fully understand that those models haven’t been presented yet...So, I fully intend to provide whatever backup you need so everyone understands what we are doing. But we have done several things in order to calculate the effect, the competitive effects, of this transaction. What we have attempted to do is refine the analysis that we had previously done in order to estimate the various types of marginal cost curves into the future for the merged firm and the non-merged firms, assuming that in the case of the non-merger they would optimally invest and in the case of the merged firm it would optimally invest. We have done a merger simulation. Then, what we have done is we have also calculated from that merger simulation... what quality changes are likely to occur.”

July 25, 2011

AT&T submits what it claims to be “a further, more detailed analysis of the likely output and price effects of the proposed transaction, focusing on the extent to which the efficiencies of the proposed transaction will result in lower marginal costs of output and higher quality levels.”

- The analysis was conducted for 15 CMAs and consists of
 - “a quantitative Economic Analysis to estimate the likely impact of the proposed transaction on output and quality-adjusted price”
 - “an Engineering Analysis performed by AT&T...which estimates the marginal cost of additional output for each of AT&T and T-Mobile USA as standalone entities and as a combined firm”
- AT&T reports that “[t]he Applicants are continuing to review and refine these analyses.”

August 5, 2011

AT&T submits an Engineering Analysis Overview as part of an *ex parte* notice following an August 3, 2011 presentation.

August 11, 2011

AT&T submits an “updated Engineering Analysis.”

August 16, 2011

AT&T submits an updated revised “Economic Analysis using the updated marginal cost figures from the Engineering Analysis submitted on August 11, 2011.”

August 19, 2011

AT&T submits supplemental materials related to the Economic Analysis from August 16, 2011.

August 23, 2011

AT&T submits a description of the Economic Model as part of an *ex parte* notice following an August 19, 2011 presentation.

- “Professor Carlton and Dr. Israel discussed the updated results of their quantitative economic analysis, submitted to the Commission on August 19, 2011.”
- The “White Paper contains additional information following up on the discussion with staff concerning the Economic Analysis.”

August 24, 2011

AT&T submits what it claims to be an explanation of the “purpose, logic and underlying assumptions and data inputs used in the Engineering Analysis that has been submitted...in the presentation dated August 3, 2011 and the letters of July 25, 2011 and August 11, 2011.”